



**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

MATTER OF S-T-V-

DATE: JAN. 8, 2019

APPEAL OF NEBRASKA SERVICE CENTER DECISION

PETITION: FORM I-140, IMMIGRANT PETITION FOR ALIEN WORKER

The Petitioner, a researcher, seeks classification as an individual of extraordinary ability in the sciences. *See* Immigration and Nationality Act (the Act) section 203(b)(1)(A), 8 U.S.C. § 1153(b)(1)(A). This first preference classification makes immigrant visas available to those who can demonstrate their extraordinary ability through sustained national or international acclaim and whose achievements have been recognized in their field through extensive documentation.

The Acting Director of the Nebraska Service Center denied the Form I-140, Immigrant Petition for Alien Worker, concluding that the Petitioner had shown that he only met two of the ten initial evidentiary criteria, of which he must meet at least three.

On appeal, the Petitioner submits additional evidence and contends that he meets three criteria.

Upon *de novo* review, we will dismiss the appeal.

I. LAW

Section 203(b)(1)(A) of the Act makes visas available to immigrants with extraordinary ability if:

- (i) the alien has extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim and whose achievements have been recognized in the field through extensive documentation,
- (ii) the alien seeks to enter the United States to continue work in the area of extraordinary ability, and
- (iii) the alien's entry into the United States will substantially benefit prospectively the United States.

The term "extraordinary ability" refers only to those individuals in "that small percentage who have risen to the very top of the field of endeavor." 8 C.F.R. § 204.5(h)(2). The implementing regulation at 8 C.F.R. § 204.5(h)(3) sets forth two options for satisfying this classification's initial evidence

requirements. First, a petitioner can demonstrate a one-time achievement (that is a major, internationally recognized award). Alternatively, he or she must provide documentation that meets at least three of the ten categories of evidence listed at 8 C.F.R. § 204.5(h)(3)(i)-(x) (including items such as awards, memberships, and published material in certain media).

Where a petitioner meets these initial evidence requirements, we then consider the totality of the material provided in a final merits determination and assess whether the record shows sustained national or international acclaim and demonstrates that the individual is among the small percentage at the very top of the field of endeavor. *See Kazarian v. USCIS*, 596 F.3d 1115 (9th Cir. 2010) (discussing a two-part review where the documentation is first counted and then, if fulfilling the required number of criteria, considered in the context of a final merits determination); *see also Visinscaia v. Beers*, 4 F. Supp. 3d 126, 131-32 (D.D.C. 2013); *Rijal v. USCIS*, 772 F. Supp. 2d 1339 (W.D. Wash. 2011). This two-step analysis is consistent with our holding that the “truth is to be determined not by the quantity of evidence alone but by its quality,” as well as the principle that we examine “each piece of evidence for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence, to determine whether the fact to be proven is probably true.” *Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010).

II. ANALYSIS

The Petitioner is a post-doctoral research associate at [REDACTED]. He received his Ph.D. in 2015 from [REDACTED] in Massachusetts and his M.D. from [REDACTED] in 2001. As he has not received a major, internationally recognized award, the record must demonstrate that he satisfies at least three of the ten criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x). In denying the petition, the Acting Director found that the Petitioner met the criteria for judging under 8 C.F.R. § 204.5(h)(3)(iv) and scholarly articles under 8 C.F.R. § 204.5(h)(3)(vi) but not for original contributions of major significance under 8 C.F.R. § 204.5(h)(3)(v). On appeal, the Petitioner maintains that he meets the criterion for original contributions of major significance. Upon reviewing all of the evidence in the record, we find that the record does not support a finding that the Petitioner satisfies at least three criteria.

Evidence of the alien’s participation, either individually or on a panel, as a judge of the work of others in the same or an allied field of specification for which classification is sought. 8 C.F.R. § 204.5(h)(3)(iv).

The Acting Director held that the Petitioner met this criterion, noting that the Petitioner has conducted reviews for *The American Journal of Medicine* and the *International Journal of STD & AIDS*, which demonstrates that he meets the requirements of this criterion.

Evidence of the alien's original scientific, scholarly, artistic, athletic, or business-related contributions of major significance in the field. 8 C.F.R. § 204.5(h)(3)(v).

This regulatory criterion contains multiple evidentiary elements that the Petitioner must satisfy. He must demonstrate that his contributions are original and scientific, scholarly, artistic, athletic, or business-related in nature. He must also establish that the contributions rise to the level of major significance in the field as a whole, rather than to a project or to an organization. The phrase “major significance” is not superfluous and thus has meaning. *See Silverman v. Eastrich Multiple Investor Fund, L.P.*, 51 F.3d 28, 31 (3d Cir. 1995), *quoted in APWU v. Potter*, 343 F.3d 619, 626 (2d Cir. 2003). “Contributions of major significance” connotes that the petitioner’s work has significantly impacted the field. *See Visinscaia*, 4 F. Supp. 3d at 134.

The Acting Director addressed the different facets of the Petitioner’s research and held that the evidence in the record does not establish the major significance of his contributions. She noted that he is listed as the first author in 20 percent of his publications and concluded that a comparison of his citation history to those of other active expert researchers in the field does not establish that his publications are of major significance in the field. On appeal, after asserting that six of his publications are ranked in the top ten percent of publications in the field of clinical medicine, the Petitioner states that this criterion does not require a comparison to the citation levels of other leading experts in the field.¹ While we note that citation rates provide evidence of discussion of the Petitioner’s work in the field, they do not, by themselves, provide sufficient context to determine the nature of that discussion or the impact of his work on the field to meet this criterion. That context must be provided by other evidence in the record. For example, a petitioner may show that the contributions have been widely implemented throughout the field, have remarkably impacted or influenced the field, or have otherwise risen to a level of major significance.

On appeal, the Petitioner states that he has “performed critical research on dietary perceptions and levels of vitamin D and omega-3 fatty acids, a Hepatitis A outbreak in India, the prevalence and economic burden of rotavirus diarrhea, and trends in HIV prevalence, HIV risk factors, and nutritional status.” He also states that he has conducted a post-marketing trial on the drug [REDACTED] and two clinical trials to develop a rotavirus drug vaccine. Here, we will assess whether the Petitioner has demonstrated that these aspects of his research represent original contributions of major significance in the field.

Regarding the Petitioner’s research on vitamin D and omega-3 fatty acids, the record reflects that he has published articles on numerous topics associated with nutrition, but he has not shown how his research on these topics constitutes original contributions of major significance. In a letter from [REDACTED] associate professor at [REDACTED] she states that the Petitioner worked with other researchers at the university “to better understand the perceptions and motivations of dietary practices of the American population.” She asserts, “While public health officials have known of

¹ The Petitioner submits an InCites citation rate chart, an updated Google Scholar report, and a Microsoft Research report regarding his citation history. We note that it is unclear upon what data the Microsoft Research report is based.

vitamin D deficiency, [the Petitioner] is one of the few researchers in this area to present a realistic view of deficient omega-3 levels.” She notes, “Although he has not yet shared the results of the following project, [his] work indicates that revisions are needed for omega-3 dosage recommendations and assists public officials in understanding the subpopulations most at risk of nutrient deficiencies.” While we agree that this appears to be an original contribution, [redacted] admission that this recommendation on omega-3 fatty acids has not yet been shared as of September 2016 does not support a finding that this has had a major impact on the field as of the time of filing. See 8 C.F.R. § 103.2(b)(1).

[redacted] a senior research scientist, references the Petitioner’s investigation into a Hepatitis A outbreak in India. He states that the Petitioner “recognized a young child’s jaundice and fever as symptoms of hepatitis A” while working at a research pediatric clinic in India. [redacted] notes, “He went house to house to identify children under the age of 10 with similar symptoms” and that after six months and having surveyed 965 children, he identified 26 children with jaundice. [redacted] states that the Petitioner then tested drinking water “tracking the source of infection.” He asserts that one of the greatest impacts of this “was his use of GIS [geographic information systems] mapping and analysis,” noting that other researchers cited his use of spatial methods “for studying infectious disease outbreaks.” We acknowledge the positive influence the Petitioner had in this community in discovering the Hepatitis A outbreak, but the record does not demonstrate that this amounts to contributions of major significance in the field as a whole. The Petitioner has not sufficiently shown that his use of GIS mapping and analysis significantly influenced the field at large.

The record contains an article on the Petitioner’s rotavirus study that was published in the journal *Vaccine* entitled, ‘[redacted]’ Although the number of citations to this article shows that his research has received notable attention from the field, the supporting evidence in the record does not demonstrate that this research equates to original contributions of major significance in the field. In a letter from [redacted] assistant professor at [redacted] he states that he utilized the Petitioner’s findings “in microsimulation models of the cost of treatment of rotavirus diarrhea.” He indicates, “We found with the help of [the Petitioner’s] work that rotavirus brings a markedly high economic burden, and we also uncovered that implementing a vaccine program to treat rotavirus both prevents deaths and reduces the financial burden of the disease.” He adds, “The implementation of [the Petitioner’s] work in my own was central to my project’s success, and it proves that [his] work is greatly advancing the science of this area.” [redacted] further states that “authors from the [redacted] in India adopted data from [the Petitioner’s] paper . . . to inform policymakers of the necessity to implement a rotavirus vaccine.” While playing a role in informing policymakers is a step towards reducing the effects of the rotavirus diarrhea, the record does not demonstrate how the Petitioner’s contributions to these other authors have been implemented by the government of India to establish that this is a contribution of major significance.

[redacted], a professor and scientist associated with [redacted] indicates in his letter, “Although vaccines exist to protect children against rotavirus, it

remains a far too common burden in countries such as India.” [REDACTED] states, “The disease burden of rotavirus was obvious, but [the Petitioner] noticed that it was of extreme importance to understand the economic burden of the disease, especially in areas with limited resources.” He then notes, “[The Petitioner’s] study was the first of its kind to show the economic burden of rotavirus diarrhea in children, overall emphasizing the need for vaccines in India” which “prompted further studies using the same methodology” throughout India. The record does not demonstrate whether this research was implemented in the field. Although it is notable that his research led to other studies on this issue, the record does not demonstrate what impact the Petitioner’s contributions had on the field overall.

With respect to the Petitioner’s research on HIV prevalence and risk factors, [REDACTED] associate professor at [REDACTED] states that “[the Petitioner] has revealed in his studies that American people, especially women, currently living with HIV have considerably poor nutritional health.” He indicates that the Petitioner “has provided the field with useful insights into the nutritional status of people living with HIV, which is necessary as a basis for developing interventions to increase the health of these individuals.” We note that the record does not demonstrate what impact these recommendations have had. “Contributions of major significance” means that the petitioner’s work has significantly impacted the field. *See Visinscaia*, 4 F. Supp. 3d at 134.

The Petitioner further states that his role in conducting three clinical trials for the purpose of developing drugs or vaccines represents original contributions of major significance. He asserts that he conducted a post-marketing trial on the HIV therapy drug [REDACTED] and two clinical trials to develop a rotavirus drug vaccine. He cites a document from the [REDACTED] which states, “Clinical trials are research studies that explore whether a medical strategy, treatment, or device is safe and effective for humans,” noting further that they “produce the best data available for health care decision making.” The record contains a document from the clinicaltrials.gov website, listing a study on [REDACTED] entitled, [REDACTED] in which the Petitioner is listed as the principal investigator. Although we note the Petitioner is listed as the principal investigator, he has not demonstrated how his role in this study impacted the field at large. The record contains an email from [REDACTED] the senior drug safety specialist for [REDACTED] a biopharmaceutical company that the Petitioner states developed [REDACTED]. [REDACTED] references the Petitioner’s article entitled, “[REDACTED]” [REDACTED] and requests that he provide information regarding the side effects that two patients experienced from this study. The record does not demonstrate that the results of this study have been widely implemented or how the information requested by [REDACTED] led to improvements in the drug that impacted the field in a significant way.

Regarding the two clinical trials to develop a rotavirus vaccine, the record reflects that these studies were published in 2014. We note that one of these studies received a notable amount of citations while the other study received much fewer. In the appeal brief, the Petitioner states that based on his findings, “the government of India decided to initiate an anti-rotavirus immunization program and

published a government report to that effect.” The evidence in the record does not support this assertion. He has not demonstrated the impact of his work on the field to meet this criterion.

In summary, the record does not demonstrate that the Petitioner’s contributions pertaining to research on the rotavirus vaccine, nutrition, or HIV represents original contributions of major significance in the field to meet this criterion.

Evidence of the alien’s authorship of scholarly articles in the field, in professional or major trade publications or other major media. 8 C.F.R. § 204.5(h)(3)(vi).

The Acting Director held that the Petitioner met this criterion an account of his articles published in the following journals: *The American Journal of Clinical Nutrition*, *Journal of Nutrition*, *Vaccine*, and *Clinical Infectious Diseases*, among others. Therefore, the Petitioner has established that he meets this criterion.

III. CONCLUSION

The Petitioner is not eligible because he has not submitted the required initial evidence of either a qualifying one-time achievement, or documents that meet at least three of the ten criteria listed at 8 C.F.R. § 204.5(h)(3)(i)-(x). Thus, we do not need to fully address the totality of the materials in a final merits determination. *Kazarian*, 596 F.3d at 1119-20. Nevertheless, we advise that we have reviewed the record in the aggregate, concluding that it does not support a finding that the Petitioner has established the acclaim and recognition required for the classification sought.

ORDER: The appeal is dismissed.

Cite as *Matter of S-T-V-*, ID# 1864483 (AAO Jan. 8, 2019)